

**United States Department of Labor  
Employees' Compensation Appeals Board**

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<b>RENEE ROGOFF, claiming as widow of MARTIN H. ROGOFF, Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 04-1960</b>
	)	<b>Issued: February 11, 2005</b>
	)	
<b>DEPARTMENT OF AGRICULTURE, AGRICULTURE RESEARCH CENTER, Greenbelt, MD, Employer</b>	)	
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	)	

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*Appearances:* *Case Submitted on the Record*  
*Attila E. Pavlath, for the appellant*  
*Office of the Solicitor, for the Director*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On August 2, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs decision dated May 15, 2004, denying her death benefits claim. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether the employee's death due to colon cancer on May 8, 1992 was causally related to factors of his federal employment.

**FACTUAL HISTORY**

This is the third appeal before the Board. On May 26, 1992 appellant filed a claim for survivor benefits following the death of her husband, a 66-year-old microbiologist, who had been employed as director of the employing establishment's Western Regional Research Center until his death on May 8, 1992. The May 9, 1992 death certificate indicated that the cause of death

was cardiopulmonary arrest, hepatic failure, hepatic metastases secondary to carcinoma of the colon. By decisions dated April 14 and December 20, 1994, the Office found that the evidence submitted was not sufficient to warrant modification of the prior decision. By decision dated September 13, 1995,<sup>1</sup> the Board set aside the Office decisions and remanded the case for a physician to consider the issue of whether the employee's colon cancer was causally related to the stressful factors of his federal employment. The case file and a statement of accepted facts was sent to Dr. Barbara A. Conley, Board-certified in internal medicine and a specialist in medical oncology, who opined in a December 10, 1995 report, that there was no causal relationship between the decedent's death and the onset of colon cancer. In a decision dated January 27, 1996, the Office denied appellant's claim as the evidence failed to establish that the employee's death was due to factors of his federal employment.

By letter dated February 22, 1996, appellant requested an oral hearing, which was held on August 19, 1996. At the hearing she submitted an August 5, 1996 affidavit from Dr. Mark A. Steves, a Board-certified surgeon and specialist in rectal and colon surgery, who reviewed the medical history and cited various medical studies which "make it virtually certain for a medical scientist that severe stress retards the efficiency of the immune system, the vitality or impairment of which in its fight against cancer is a major deciding factor in the rate of remission or growth to fatality." Dr. Steves stated that, if not for the extremely stressful working environment to which the employee was exposed in the years prior to his death and every other factor in his private and professional life would have remained the same, he would not have died on May 8, 1992. At the conclusion of the hearing, the Office hearing representative vacated the December 20, 1995 decision and remanded the case, finding a conflict in medical opinion between Dr. Conley and Dr. Steves. The case was referred to an impartial medical examiner, Dr. Dal Yoo, Board-certified in internal medicine and a specialist in medical oncology, who concluded in a June 26, 1997 report, that the employee's colon cancer and death were not causally related to his stress at work. In a decision dated July 30, 1997, the Office denied appellant's claim, based on Dr. Yoo's impartial medical opinion as the evidence failed to establish that the employee's death was due to factors of his federal employment.

By decision dated February 1, 1999,<sup>2</sup> the Board reversed the July 30, 1997 Office decision, finding that Dr. Yoo's opinion was not sufficient to resolve the conflict in medical evidence. He failed to clarify or elaborate the specific background upon which he based his opinion.<sup>3</sup>

The Office referred appellant to Dr. I. Stanley Anderson, Board-certified in internal medicine. In a report dated June 18, 1999, he addressed findings on examination, reviewed the medical history and statement of accepted facts. Dr. Anderson cited several medical journals which asserted that the specific causes of colon cancer were unknown and that the etiology of

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<sup>1</sup> Docket No. 95-1265 (issued September 13, 1995).

<sup>2</sup> Docket No. 98-18 (issued February 11, 1999).

<sup>3</sup> The facts of this case are set forth in the Board's June 2, 1997 decision and are herein incorporated by reference.

colon cancer remained uncertain. Regarding appellant's claim that her husband's colon cancer was caused or aggravated by stressful factors of employment, Dr. Anderson stated:

"I can state categorically that stress does not cause cancer. Stress is not listed as a probable cause of cancer of the colon by the leading authorities in oncology. The cause of colon cancer remains unknown. The articles submitted by Dr. Steves do not represent accepted medical opinion and therefore should be thrown out of this discussion and dismissed. Inference is made to the presence of peptic ulcer as physical evidence of stressful factors. Cecil textbook of medicine 1992 states, 'Although controlled studies suggest a relationship between emotional stress and ulcer disease in some patients, its exact role is uncertain. Again I feel that this analogy upon which Dr. Steves places so much emphasis should [be] disregarded; especially as the ulcer occurred after a complication or the cancer of a complication of the therapy; or both...."

"Cancer of the colon is a common disease after age 50.... The incidence and survival rates following surgical resection of tumor have not improved significantly in the last 40 years.... To introduce stressful factors of the job as a cause of promotion of this cancer is to obfuscate the situation.

"After careful review of the literature and a study of this case I would like to restate that stress does not cause colon cancer. [The decedent] was diagnosed as having rectal cancer in January 1991. To suggest that his working environment in the previous five years sped up the spread of his cancer is incredulous and ludicrous. The risk factor for [the decedent] was age, not stress. None of the leading authorities on colon cancer include stress as a probable etiologic factor in colon cancer. My conclusion is that [the decedent's] death of colon cancer was not related to stressful factors of his federal employment."

By decision dated March 7, 2002, the Office found that Dr. Anderson's impartial opinion represented the weight of medical evidence and denied appellant's claim. By letter dated April 1, 2002, her representative, requested an oral hearing, which was held on February 25, 2004. Appellant contended that Dr. Anderson's report was flawed because, although he stated "categorically" that the cause of colon cancer was unknown, he contradicted this assertion by stating that it was not caused by stress. She contended that at least two major international studies published in highly respected medical journals supported the conclusion that work-related problems appeared to put people at an increased risk of developing colon and rectal cancer.<sup>4</sup> Appellant relied on the report of Dr. Steves to assert there was a causal relationship between stress, the decedent's colon cancer and his death because the stress under which he was working undermined the efficiency of his immune system.

By decision dated May 11, 2004, an Office hearing representative affirmed the March 7, 2002 decision.

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<sup>4</sup> Dr. Pavlath noted that the case file contained a National Institute of Occupational Safety and Health (NIOSH) study which suggested a strong correlation between occupational stress and colorectal cancer.

## LEGAL PRECEDENT

Appellant has the burden of proving by the weight of the reliable, probative and substantial evidence that the employee's death was causally related to his federal employment. This burden includes the necessity of furnishing medical opinion evidence of a cause and effect relationship based on a proper factual and medical background.<sup>5</sup>

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.<sup>6</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>7</sup> must be one of reasonable medical certainty<sup>8</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>9</sup> To be of probative value to appellant's claim, the medical evidence must contain a rationale which addresses the specifics, both factual and medical, of the employee's death.<sup>10</sup>

Section 8123(a) of the Federal Employees' Compensation Act<sup>11</sup> provides that, when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.<sup>12</sup>

## ANALYSIS

In this case, the Office properly relied on the impartial medical opinion of Dr. Anderson, who reviewed the medical evidence in this case, the material submitted by Dr. Steves which posited a causal connection between stress and colon cancer and several leading oncology reference texts which asserted that the specific causes of colon cancer were unknown. Dr. Anderson concluded that the employee's death was not caused by factors of his employment;

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<sup>5</sup> *Kathy Marshall (James Marshall)*, 45 ECAB 827, 832 (1994); *Timothy Forsyth (James Forsyth)*, 41 ECAB 467, 470 (1990).

<sup>6</sup> *See Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959).

<sup>7</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>8</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>9</sup> *See William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>10</sup> *Victor J. Woodhams*, 41 ECAB 345, 353 (1989).

<sup>11</sup> 5 U.S.C. § 8123(a).

<sup>12</sup> *Gary R. Seiber*, 46 ECAB 215 (1994); *Aubrey Belnavis*, 37 ECAB 206 (1985).

*i.e.*, stress working conditions. He noted that the leading authorities on oncology did not list stress among the probable causes of colon cancer and opined that the cause of colon cancer remained unknown. Dr. Anderson stated that Dr. Steves' conclusions constituted inferences from medical journals which did not represent the consensus of accepted medical opinion pertaining to the subject. He rejected Dr. Steves' opinion that the decedent's rectal cancer, which was diagnosed in January 1991, was accelerated or contributed to by a stressful work environment in the previous five years and advised that decedent's primary risk factor was age, not stress.

The Board finds that Dr. Anderson's impartial medical opinion that the decedent's death was not caused by cancer is sufficiently probative, rationalized and based upon a proper factual background. For this reason his opinion represents the weight of the medical evidence. Dr. Anderson's opinion is sufficient to resolve the conflict in the medical evidence. Accordingly, the Board finds that Dr. Anderson's opinion supports the Office's March 7, 2002 and May 11, 2004 decisions denying compensation for death benefits. The Board will affirm the Office hearing representative's May 11, 2004 decision.

### **CONCLUSION**

The Board finds that the Office properly found that appellant failed to meet her burden to establish that the employee's death due to colon cancer on May 8, 1992 was causally related to factors of his federal employment.

### **ORDER**

The decision of the Office of Workers' Compensation Programs dated May 11, 2004 is hereby affirmed.

Dated, February 11, 2005  
Washington, D.C.

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member